SUPREME COURT, U.S.
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No. 94-510

In The

Supreme Court of the United States

October Term, 1994

ZEKARIA REALTY, INC.,

Petitioner,

v.

COUNTY OF OCEAN, a Public Corporation of the State of New Jersey,

Respondent.

On Petition For Writ Of Certiorari To The Superior Court Of New Jersey, Appellate Division

RESPONDENT'S BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a property owner is entitled to recover damages in condemnation for the taking of an easement which the property owner conveyed to the County as a condition of variance and site plan approval fourteen years prior to the taking where no claim for just compensation is made until fourteen years after the conveyance, and after the expiration of the applicable statute of limitations?

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ZEKARIA REALTY, INC.,

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COUNTY OF OCEAN, a Public Corporation of the State of New Jersey,

Respondent.

On Petition For Writ Of Certiorari To The Superior Court Of New Jersey, Appellate Division

RESPONDENT'S BRIEF IN OPPOSITION

TO THE HONORABLE SUPREME COURT:

The Respondent, County of Ocean, respectfully requests that this Court deny the Petition for Writ of Certiorari submitted by the Petitioner, Zekaria Realty, Inc.

OPINIONS BELOW

See the Petition for Writ of Certiorari.[1]

CONSTITUTIONAL PROVISIONS, STATUTES AND RULES INVOLVED

The constitutional provisions, treaties, statutes, ordinances and regulations involved in the case are:

1. The Fifth Amendment to the United States Constitution, which provides:

> "No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of war or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation."

2. The Fourteenth Amendment to the United States Constitution, Section 1, which provides:

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[1] It should be noted that the Order of the Supreme Court of New Jersey denying the Appellant's Motion for Leave to Appeal is dated June 21, 1994 and not June 22, 1994, as set forth in the Petition. (See page 1 of Petition and page A15 of the Appendix thereto.)

> "All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

3. The New Jersey Statutes, N.J. Stat. Ann. 2A:14-1 (West 1987), which provides:

> "Every action at law for trespass to real property, for any tortious injury to real or personal property, for taking, detaining, or converting personal property, for replevin of goods or chattels, for any tortious injury to the rights of another not stated in sections 2A:14-2 and 2A:14-3 of this Title, or for recovery upon a contractual claim or liability, express or implied, not under seal, or upon an account other than one which concerns the trade or merchandise between merchant and merchant, their factors, agents and servants, shall be commenced within 6 years next after the cause of any such action shall have accrued.
>
> This section shall not apply to any action for breach of any contract for sale governed by section 12A:2-725 of the New Jersey Statutes."

4. The New Jersey Court Rules, R. 4:69, entitled "Actions in Lieu of Prerogative Writs," is set forth in the Appendix to the Petition for Writ of Certiorari, pages A49 to A53.

STATEMENT OF THE CASE

This matter involves a condemnation action concerning property owned by Zekaria Realty, Inc. (hereinafter referred to as "Petitioner"). By Motion approved on March 20, 1990, the Ocean County Board of Chosen Freeholders authorized the County Engineer to acquire right-of-way and/or easements by gift, purchase or condemnation for the Brick Boulevard Widening from Duquesne Boulevard to Route 70, Brick Township. Thereafter, on March 31, 1992, the County of Ocean (hereinafter referred to as "Respondent") filed a Complaint in Condemnation to acquire a fee simple interest in and a temporary construction easement over part of Lots 11, 11.1 and 11.2 in Block 673 in the Township of Brick, Ocean County, New Jersey for road widening purposes.

On May 27, 1992, Respondent filed a Declaration of Taking entitling the Board of Chosen Freeholders of the County of Ocean to exclusive possession, title and use of the premises pursuant to N.J.S.A. 20:3-17 through 20 and N.J.S.A. 27:16-1 et seq. A Notice of Lis Pendens was recorded on April 10, 1992.

The subject property comprises 1.648 +/- acres. The subject property is located in the B-3 Highway Development zone of Brick Township and generally did not conform to the zoning requirements of the zone prior to the taking. The subject improvements, as part of the subject property, are utilized as a furniture/designer showroom and ladies' boutique, which constitute a pre-existing nonconforming use.

The taking of the subject property comprises an area which is between 17.04 and 22.75 feet in width and 173.69

feet in length along the property's entire frontage on Brick Boulevard, totaling 3420 +/- square feet or approximately .079 +/- acres.

Although the taking allegedly resulted in the loss of 9 of twenty parking spaces located in the front of the building on the subject property, the appraisal report prepared by Atlantic Coast Realty Appraisal Group for Respondent did not consider damages to the remainder of the subject property as, based upon the relevant facts, no such damages were sustained. (See Appendix to Petition for Writ of Certiorari, pages A43 and A44.)

By Motion approved on November 1, 1978, the Ocean County Planning Board granted final approval for a site plan submitted for the subject property contingent upon, among other things, the developer's dedication of forty feet from the center line of Brick Boulevard to Respondent and the filing of a road easement form for said dedication. (See Appendix to Petition for Writ of Certiorari, page A22.) By Motion approved on December 6, 1978, the Ocean County Planning Board granted final approval for the site plan subject to the filing of the road easement form for the aforesaid dedication. (See Appendix to Petition for Writ of Certiorari, page A26.)

On February 14, 1979, the Brick Township Planning Board issued to Petitioner final approval for a site plan with variance request on the subject property. (See Petitioner's Appendix, pages A29 to A34.) The variances were for minimum lot area, minimum front yard set-back and minimum side yard set-back on both sides.

Significantly, the site plan was approved subject to several conditions, including: "8. That any change or

deviation in the approved site plan will require the applicant to come back before the Brick Township Planning Board for approval of said change or deviation." (See Petitioner's Appendix, page A31.) Further, one of the factual findings made by the Planning Board provides: "4. The applicant has donated fifteen (15') feet to the County of Ocean for possible future street widening." (See Petitioner's Appendix, page A33.)

By Road Easement dated January 22, 1979 and recorded February 23, 1979, Petitioner granted and dedicated to Respondent a 15.25 foot wide perpetual easement on the subject property running parallel to and adjacent to Brick Boulevard for a public road. (See Petitioner's Appendix, pages A36 to A40.) Further, the site plan approval received by Petitioner on February 14, 1979 does not permit parking on the portion of the property located in front of the building and abutting Brick Boulevard, as reflected on page A35 of Petitioner's Appendix. (See also Affidavit of Sean Kinnevy, Brick Township Zoning Officer, set forth in the Appendix hereto as A1 to A2.) Further, Petitioner never received any other site plan approval from the Township of Brick or any board, body or agency thereof after February 14, 1979 which would allow parking spaces to be located in the aforesaid area. (See Appendix hereto, pages A1 to A2.) Therefore, no damages to the remainder of the subject property were considered by Respondent's appraiser in his report as none were sustained. Respondent submits that Petitioner cannot receive compensation for any such damages as the 9 parking spaces in question are not permitted by the site plan approved by the Brick Township Planning Board or on property where the Petitioner had the unencumbered

property interest. (See Petitioner's Appendix, pages A29 to A35 and A43.)

On or about July 22, 1993, Petitioner filed in the Superior Court of New Jersey, Law Division, a Motion to Exclude Respondent's Appraisal Report. On or about August 12, 1993, Respondent filed a Cross-Motion to Limit Petitioner's Appraisal Report. By Order dated September 1, 1993, the Honorable Rosalie B. Cooper, J.S.C., denied Petitioner's Motion to Exclude Plaintiff's Real Estate Appraisal. (See Petitioner's Appendix, pages A16 to A17.) In said Order, Judge Cooper also granted Respondent's Cross-Motion to the extent that the Deed of Road Easement was determined to be lawfully owned by the County of Ocean and ordered that the County need not pay any compensation for the interest in real property reflected in said Deed.

By Order dated September 24, 1993, the Honorable Rosalie B. Cooper, J.S.C., granted Petitioner's Motion for a Stay pending disposition of the appeal. (See Petitioner's Appendix, pages A18 and A19.) By Order dated October 18, 1993, the Appellate Division granted Petitioner's Motion for Leave to Appeal. (See Petitioner's Appendix, page A14.)

In its March 4, 1994 decision, the Appellate Division stated that Petitioner was subject in 1979 to the time limits prescribed by the New Jersey Court Rules for challenging any planning board decisions. (See Petitioner's Appendix, page A10.) The court determined that Petitioner's right to challenge the Board's condition accrued at the moment it conveyed the deed of easement to

Respondent. (See Petitioner's Appendix, page A10.) Petitioner, however, failed to file an action in lieu of prerogative writs challenging the Ocean County Planning Board's condition within the 45 day time period set forth in R. 4:69-6(b)(3). Further, the Appellate Division found that there was no novel or substantial constitutional question which must be resolved, nor any important public interest requiring clarification or adjudication. Therefore, the forty-five day time limitation set forth in R. 4:69-6(b)(3) for challenging the County Planning Board's determination was not enlarged pursuant to R. 4:69-6(c). (See Petitioner's Appendix, pages A10 and A11.)

The Appellate Division concluded that Petitioner's lack of diligence during the fourteen-year lapse of time before attacking the Planning Board's requirement of the donative conveyance of the fifteen-foot-wide road easement was fatal to its claim for compensation in this condemnation proceeding. As stated by the Appellate Division, while "the [Petitioner] could have granted the easement under protest and promptly started an action in lieu of prerogative writ to challenge the alleged 'donation . . . for possible future street widening,' " Petitioner failed to do so "but proceeded to use the roadside parking spaces without approval until condemnation loomed." (See Petitioner's Appendix, page A11.)

By Order dated June 21, 1994, the Supreme Court of New Jersey denied Petitioner's Motion for Leave to File an Interlocutory Appeal from Order of the Superior Court of New Jersey, Appellate Division. (See Petitioner's Appendix, page A15.)

SUMMARY OF THE ARGUMENT

I. This case presents no issue appropriate for the Court's exercise of its discretionary jurisdiction.

A. Petitioner is not entitled to just compensation for the taking of the easement as Petitioner brought its claim beyond the forty-five day period prescribed by the New Jersey Court Rules. Contrary to Petitioner's argument, Petitioner also brought its claim beyond the applicable statute of limitations.

B. The Appellate Division did not abuse its discretion by denying Petitioner's request for the enlargement of the forty-five day period set forth in the New Jersey Court Rules as there is no novel or substantial constitutional question which must be resolved; nor is there any important public interest which requires clarification or adjudication. Further, the appropriate statute of limitations which pertains to this matter is set forth in N.J.S.A. 2A:14-1, which provides for a six year statute of limitations for every action at law for any tortious injury to real property.

C. Petitioner's cause of action accrued at the time it conveyed the deed of easement to Respondent in 1979. Petitioner's illegal use of the roadside parking spaces without approval does not alter the time upon which Petitioner's cause of action accrued.

D. The Petition should also be denied based upon the following grounds:

1. Petitioner's failure to assert its claim to just compensation for fourteen years after the conveyance of the easement to Respondent constitutes laches;

2. Petitioner's execution and conveyance of the deed of easement to Respondent estops Petitioner from claiming that the requirement of the execution of the easement was unauthorized; and

3. As a result of Petitioner's unauthorized use of the portion of its property abutting Brick Boulevard for parking, Petitioner has unclean hands and, therefore, should not be permitted to benefit from this unauthorized use of its property.

ARGUMENTS AND AUTHORITIES

I.

REASONS FOR DENIAL OF WRIT OF CERTIORARI

This case presents no novel question of law. It concerns the timeliness of a challenge to the requirement of a county planning board for the dedication of an easement for road widening as a condition of approval of a site plan application. In the instant case, Petitioner's challenge to the requirement of the Ocean County Planning Board for the dedication of such an easement was clearly untimely where it was made after the forty-five day time period provided by R. 4:69-6(b)(3) and where no novel or substantial constitutional question or important public interest was presented. The Superior Court of New Jersey, Appellate Division, did not decide an important question

of federal law which has not been, but should be, settled by this Court; nor did it decide a federal question in a way that conflicts with applicable decisions of this Court.

Petitioner now argues that its claim to just compensation for the allegedly unconstitutional dedication of the easement in 1979 was made well within the twenty year statute of limitations for actions affecting real estate, N.J. Stat. Ann. 2A:14-7 (West 1987). (See Petition for Writ of Certiorari, pages 7 and 8.) Nevertheless, this statute does not apply to the within action. Rather, N.J.S.A. 2A:14-1, which provides a six year statute of limitations for an action at law for any tortious injury to real property, certainly must be deemed to apply to Petitioner's claim of inverse condemnation. See *Harisadan v. East Orange,* 453 A.2d 888 (N.J. Super. Ct. App. Div. 1982). Therefore, Petitioner's argument that its request for just compensation was made within the statute of limitations is clearly misplaced.

Petitioner's claim that the Appellate Division abused its discretion by failing to enlarge the forty-five day period prescribed by the New Jersey Court Rules is likewise unsupported. Contrary to Petitioner's assertions, as set forth above, its claim for just compensation was not made within the applicable statute of limitations set forth in N.J.S.A. 2A:14-1. Further, the absence of (1) any novel or substantial constitutional question which must be resolved and (2) any important public interest requiring clarification or adjudication supports the Appellate Division's decision to deny Petitioner's request to enlarge the forty-five day time period provided by R. 4:69-6(b)(3).

Petitioner's argument that its cause of action accrued at the time of the current taking because Respondent failed to enforce the easement, thereby permitting Petitioner's continued use thereof, is also unavailing. Petitioner's lack of diligence during the fourteen-year lapse of time before attacking the Planning Board's requirement of the conveyance of the easement is fatal to its claim for just compensation as the cause of action most certainly accrued at the time of the conveyance of the easement. Its continued unlawful use of the easement has no bearing on the issue of the accrual of its cause of action.

Therefore, there exists absolutely no jurisdictional basis whatsoever for the Petition for Writ of Certiorari and it must be denied.

II.

PETITIONER'S CLAIM FOR JUST COMPENSATION WAS UNTIMELY AS IT WAS MADE BEYOND THE FORTY-FIVE DAY TIME PERIOD PROVIDED BY R. 4:69-6(b)(3) AND BEYOND THE APPLICABLE STATUTE OF LIMITATIONS.

Petitioner relies upon the case of *Dolan v. City of Tigard*, 114 S. Ct. 2309, 2316 (1994) in support of its claim that the dedication required by the Ocean County Planning Board would fail the "reasonable relationship" test set forth in *Dolan*. (See Petition for Writ of Certiorari, page 10.) Conspicuously absent from the Petition, however, is any assertion that the Superior Court of New Jersey, Appellate Division, decided a federal question in the instant case in a manner that conflicts with the *Dolan* case. Significantly, the *Dolan* case did not address the

issue of timeliness with regard to a challenge to a governmental action. Thus, the *Dolan* case is inapposite to the case at bar.

Further, Petitioner states that the Appellate Division's opinion does not address Petitioner's assertion that its claim for just compensation for the inverse condemnation was made within the twenty year statute of limitations. (See Petition for Writ of Certiorari, page 10, footnote 1.) In fact, Petitioner failed to raise this argument in the courts below. As Petitioner certainly had the opportunity to present this issue below, and it does not go to the jurisdiction of the trial court or concern a matter of great public interest, this Court should decline to consider this issue. *Nieder v. Royal Indemnity Ins. Co.*, 300 A.2d 142, 145 (N.J. Sup. Ct. 1973).

Nevertheless, should this Court decide to consider this issue, Respondent respectfully submits that the applicable statute of limitations for the filing of an inverse condemnation action is six years, as set forth in N.J.S.A. 2A:14-1. This statute provides, in pertinent part: "Every action at law for trespass to real property, for any tortious injury to real or personal property, . . . shall be commenced within 6 years next after the cause of any such action shall have accrued. . . . " (The complete text of this statute is set forth on page 3 herein.) Thus, contrary to Petitioner's argument, its claim to just compensation was asserted long after the expiration of the forty-five day time period set forth in R. 4:69-6(b)(3) ***and*** the applicable statute of limitations. Accordingly, Petitioner's claim was clearly untimely and should be denied.

III.

THE APPELLATE COURT APPROPRIATELY EXERCISED ITS DISCRETION BY DENYING PETITIONER'S REQUEST FOR THE EXPANSION OF THE FORTY-FIVE DAY TIME PERIOD FOR CHALLENGING THE PLANNING BOARD'S ACTION.

Petitioner conclusorily states that the instant case presents an important and novel constitutional question and an important public rather than private interest which requires adjudication or clarification, thereby requiring a relaxation of the forty-five day time period imposed by R. 4:69-6(b)(3). (See Petition for Writ of Certiorari, page 14.) In fact, as recognized by the Appellate Division, the issue of the constitutionality of the dedication of an easement by a county planning board in circumstances allegedly similar to those presented herein was determined as early as 1975 in the case of *181 Inc. v. Salem County Planning Bd.*, 336 A.2d 501 (N.J. Sup. Ct. Law Div. 1975), *aff'd in part, rev'd in part*, 356 A.2d 56 (N.J. Sup. Ct. App. Div. 1976). (See Appendix to Petition, page A9.)[2] Thus, the Appellate Division was certainly correct in determining that "there is no novel or substantial constitutional question which commands resolution . . . " (See Appendix to Petition, page A11.) Further, as this case involves the rights of a private property owner, clearly,

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[2] Although the Appellate Division determined that Respondent acted unconstitutionally if it required Petitioner to dedicate the 1979 easement as a condition of the approval (See Appendix to Petition, page A7.), Respondent respectfully submits that this issue is fact sensitive and that the Appellate Division improperly made this determination without the benefit of a full record of the proceedings below.

there exists no compelling public interest to support Petitioner's claim for the enlargement of the forty-five day time period.

As stated by the Superior Court of New Jersey, Appellate Division, in the case of *Kent, et al. v. Borough of Mendham et al.*, 267 A.2d 73, 77 (N.J. Sup. Ct. App. Div. 1970), (quoting *Robbins v. Jersey City*, 128 A.2d 673, 678 (N.J. Sup. Ct. 1957)), "Exceptions to the time limitations imposed upon the in-lieu procedure should be but exceptionally condoned, and only in the most persuasive circumstances." As Petitioner has failed to demonstrate an important and novel constitutional question or an important public interest requiring adjudication or clarification, the Appellate Division's denial of Petitioner's request for the enlargement of the forty-five day period for challenging the Planning Board's action should be upheld.

IV.

PETITIONER'S CLAIM TO JUST COMPENSATION ACCRUED AT THE TIME IT CONVEYED THE DEED OF EASEMENT TO RESPONDENT.

Petitioner seeks to rely upon its illegal use of the easement as twenty parking spaces between the time of conveyance of the easement to Respondent and the current taking to support an argument that Petitioner's cause of action for just compensation did not accrue until the time that its use and enjoyment of the easement were abridged, specifically, at the time of the current 1992 taking. (See Petition, pages 14 and 15.) This argument, however, is unavailing.

Petitioner is effectively asserting a claim of title to the portion of the property comprising the dedicated easement through adverse possession of said property. This claim, however, is meritless as Petitioner cannot satisfy the elements necessary to establish such a claim. As provided by N.J.S.A. 2A:14-30:

> "*Thirty-years'* actual possession of any real estate . . . uninterruptedly continued by occupancy, descent, conveyance or otherwise, shall, in whatever way or manner such possession might have commenced or have been continued, vest a full and complete right and title in every actual possessor or occupier of such real estate, . . . and shall be a good and sufficient bar to all claims that may be made or actions commenced by any person whatsoever for the recovery of any such real estate . . . " (emphasis added) (See Appendix hereto, page A3.)

Thus, Petitioner's attempt to shift to Respondent the burden of establishing title to the easement is without basis. As stated by the court in *Trenkamp v. Twp. of Burlington*, 406 A.2d 218, 225 (N.J. Sup. Ct. Law Div. 1979), (quoting *Kohler v. Barnes*, 301 A.2d 474, 479 (N.J. Sup. Ct. Law Div. 1973)), " 'Generally, a cause of action accrues when facts exist which entitle one party to maintain an action against another.' " (See Appendix to Petition, page A9.) Thus, as recognized by the Appellate Division in the present case, "The defendant's right to challenge the Board's condition accrued at the moment it conveyed the deed of easement to the County . . . " (See Appendix to Petition, page A10.) As further stated by the Appellate Division, " . . . defendant's lack of diligence . . . is fatal to

its claim for compensation in this condemnation proceeding." (See Appendix to Petition, page A11.) Petitioner's illegal use of the roadside parking spaces without municipal or County approval does not alter the time of accrual of Petitioner's cause of action. Accordingly, the Petition is time-barred.

V.

THE PETITION IS BARRED BY THE DOCTRINES OF LACHES, ESTOPPEL AND UNCLEAN HANDS.

Respondent respectfully submits that the Petition is also barred by the doctrines of laches, estoppel and unclean hands. Laches is an affirmative equitable defense generally defined as: " 'Such neglect or omission to assert a right as taken in conjunction with the lapse of time more or less great in other circumstances causing prejudice to an adverse party so as to operate as a bar in a court of equity.' " *Enfield v. FWL, Inc.*, 607 A.2d 685, 694 (N.J. Sup. Ct. Ch. Div. 1991), *aff'd* 607 A.2d 666 (N.J. Sup. Ct. App. Div. 1992), *certif. denied*, 611 A.2d 648 (N.J. Sup. Ct. App. Div. 1992), (quoting Pomeroy, 2 *Eq. Jurisprudence*, Sec. 419 at 171-72 (5th Ed. 1941)). See also *Matter of Adoption of a Child of Indian Heritage*, 543 A.2d 925, 942 (N.J. Sup. Ct. 1988); *Good et als. v. Lackawanna Leather Co. et als.*, 233 A.2d 201, 212 (N.J. Sup. Ct. Ch. Div. 1967); and *Clark v. Judge*, 200 A.2d 801, 811 (N.J. Sup. Ct. Ch. Div. 1964), *aff'd* 210 A.2d 415 (N.J. Sup. Ct. 1965).

It is well-recognized that the policy behind laches is the discouragement of stale claims. *Enfield*, supra at 694, citing *Gladden v. Bd. of Trustees of Public Emp. Retirement System*, 409 A.2d 294 (N.J. Sup. Ct. App. Div. 1979). As

stated in BLACK'S LAW DICTIONARY 453 (Abridged 5th ed. 1983):

> "Doctrine of laches is based upon maxim that equity aids the vigilant and not those who slumber on their rights . . . The neglect for an unreasonable and unexplained length of time under circumstances permitting diligence, to do what in law, should have been done.
>
> Knowledge, unreasonable delay, and change of position are essential elements. Laches requires an element of estoppel or neglect which has operated to prejudice of defendant."

In the instant case, certainly, Petitioner, through its agents, officers or representatives, was aware of the conveyance of the road easement to Respondent as of January 22, 1979, the date of execution. The delay of fourteen years from the execution of the easement until the date on which Petitioner's Motion was filed with the trial court below and its claim asserted is clearly unreasonable. As the Appellate Division recognized, Petitioner could have granted the easement to Respondent under protest and promptly started an action in lieu of prerogative writs in a timely fashion. (See Appendix to Petition, page A11.) Its failure to do so bars its claim for relief.

Petitioner's actions in conveying the easement to Respondent also operate to estop Petitioner from claiming at this juncture that the County and municipal planning boards had no power to require same. The term estoppel is defined as:

> " . . . party is prevented by his own acts from claiming a right to detriment of other party who was entitled to rely on such conduct and has

> acted accordingly. An estoppel arises when one is concluded and forbidden by law to speak against his own act or deed. An inconsistent position, attitude or course of conduct may not be adopted to loss or injury of another." BLACK'S LAW DICTIONARY 285 (Abridged 5th ed. 1983).

As stated by the court in *State v. East Shores, Inc.*, 380 A.2d 1168, 1174 (N.J. Sup. Ct. Ch. Div. 1977), *modified* 397 A.2d 368 (N.J. Sup. Ct. App. Div. 1979), (citing *State v. United States Steel Corp.*, 126 A.2d 168, 177 (N.J. Sup. Ct. 1956) and *Thomas v. Camden Trust Co.*, 157 A.2d 355, 359 (N.J. Sup. Ct. Law Div. 1960)), "The conduct which results in equitable estoppel can include spoken or written words, positive acts, failure to act and silence . . . " Clearly, Petitioner is estopped by its actions from claiming that the requirement of the execution of the easement was unauthorized.

Moreover, the relief sought by Petitioner in its Petition for Writ of Certiorari is barred by the doctrine of unclean hands. As stated in the case of *Faustin v. Lewis*, 427 A.2d 1105, 1107 (N.J. Sup. Ct. 1981), "[The doctrine of unclean hands] merely gives expression to the equitable principle that a court should not grant relief to one who is a wrongdoer with respect to the subject matter in suit."

Petitioner's use of the portion of its property abutting Brick Boulevard was wholly inconsistent with the requirements and conditions of the site plan approval granted by the Brick Township Planning Board on February 14, 1979. As such, Petitioner cannot be permitted to benefit from said illegal use, and its Petition must therefore be denied.

Further, it should be noted that, in the event that this Court grants the Petition and reverses the Appellate Division's decision, any person with a ***claimed*** violation of a constitutional right would be permitted to assert that right ***at any time*** subsequent to the date of the alleged violation. It would thereby eliminate all time constraints for the filing of such a claim and would result in the flooding of the courts with untimely complaints. There are many public policy reasons for time-barring such stale complaints, namely, (1) the availability of witnesses, (2) the destruction of pertinent records, (3) the witnesses' ability to recollect pertinent facts, and, in a case of this nature, (4) justifiable reliance by a grantee upon the conveyance of the property interest in question.

Thus, the allowance of Petitioner's claim for just compensation fourteen years after it accrued would constitute a major expansion of existing law. Clearly, a property owner alleging the violation of his constitutional rights has a duty to assert his claim within a reasonable time frame. Petitioner's failure to do so in the instant case bars its claim for relief.

CONCLUSION

The Appellate Division correctly determined that Petitioner's claim for just compensation for the taking of the easement was time-barred. Respondent respectfully requests that this Court deny the Petition for Writ of Certiorari because (1) the case presents no issue appropriate for the Court's review, (2) no substantial constitutional question or important public interest requires

adjudication or clarification and (3) the lower courts' holdings were not in error.

Respectfully submitted,

SEYMOUR J. KAGAN, ESQUIRE

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Dated: October 24, 1994

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COUNTY OF OCEAN, Plaintiff vs. ZEKARIA REALTY, INC., et al. Defendants	: SUPERIOR COURT OF NEW JERSEY : LAW DIVISION : COUNTY OF OCEAN : Docket No. OCN-L-1496-92 : : CIVIL ACTION : : AFFIDAVIT OF SEAN KINNEVY

State of New Jersey)
SS:
County of Ocean)

Sean Kinnevy, of full age, being duly sworn according to law, upon his oath, deposes and says:

1. I make this Affidavit in my capacity as the Zoning Officer for the Township of Brick. I have held this position since 1980.

2. I have reviewed the Brick Township Planning Board's file for the property located at Lots 11, 11.1 and 11.2 in Block 673 in the Township of Brick, Ocean County, New Jersey.

3. The only site plan approval contained in the file is the approval given by the Brick Township Planning

Board by Resolution R-9-79 dated February 14, 1979. This site plan approval is based upon a map prepared by Triangle Engineering Associates, Inc. which was last revised on March 15, 1979.

4. Although the aforesaid map provides for certain parking spaces to be located directly adjacent to the building on the property, the map does not provide for parking spaces on the portion of the property located in front of the building and abutting Brick Boulevard.

5. Further, the owner of the property never received any other site plan approval from the Township of Brick or any board, body or agency thereof after February 14, 1979 which would allow parking spaces to be located in the aforesaid area.

6. Therefore, those parking spaces that were located in said area were not legally permitted and were inconsistent with the site plan approval issued by the Brick Township Planning Board on February 14, 1979.

/s/ Sean Kinnevy
SEAN KINNEVY

Sworn to and subscribed before
me this 12th day of August, 1993.

/s/ Dina R. Khajezadeh
DINA R. KHAJEZADEH
ATTORNEY-AT-LAW OF
NEW JERSEY

N.J. Stat. Ann. § 2A:14-30 (West 1987)

2A:14-30. 30 years' possession of real estate, except woodlands or uncultivated tracts, and 60 years' possession of woodlands or uncultivated tracts however commenced or continued.

Thirty years' actual possession of any real estate excepting woodlands or uncultivated tracts, and 60 years' actual possession of woodlands or uncultivated tracts, uninterruptedly continued by occupancy, descent, conveyance or otherwise, shall, in whatever way or manner such possession might have commenced or have been continued, vest a full and complete right and title in every actual possessor or occupier of such real estate, woodlands or uncultivated tracts, and shall be a good and sufficient bar to all claims that may be made or actions commenced by any person whatsoever for the recovery of any such real estate, woodlands or uncultivated tracts.